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RUEHPF/AMEMBASSY PHNOM PENH PRIORITY 0648

RUEHFK/AMCONSUL FUKUOKA PRIORITY 9526

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CB, JA

SUBJECT: JAPAN'S VIEWS ON WAR CRIME ISSUES

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Classified By: Charge d'Affairs Joe Donovan for reasons 1.4 (b) and (d)

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¶1. (C) Summary: During a series of meetings on December 21-22, 2006, Senior Advisor to the Office of War Crime Issues Milbert Shin met with academics, Japan Institute of International Affairs (JIIA) think tank scholars, and government officials to discuss progress in the establishment of the Khmer Rouge Tribunal (KRT) (also referred to as the Extraordinary Chambers in the Courts of Cambodia (ECCC)), potential United States Government assistance to the KRT, nation-building in East Timor, and the International Criminal Tribunal for the former Yugoslavia (ICTY). Building democratic institutions, establishing rule of law, and maintaining stability need to be accomplished before Cambodia and East Timor can begin the process of accounting for past human rights violations, said Former United Nations Special Representative of the Secretary-General and Hosei University Professor Sukehiro Hasegawa, former Ambassador of Japan to East Timor Ambassador Hideki Asahi, and Ministry of Foreign Affairs officials. Turning to the ICTY, completion of all cases by the end of 2010 is a major priority for Japan, explained MOFA UN Policy Division Director Shigeki Takizaki. If the ICTY fails to complete its mission by the end of 2010, funding for further proceedings should be on a voluntary basis by concerned countries. Japan is willing to discuss closer to the 2010 deadline specific procedures and mechanisms for any unexpected contingencies and to address residual jurisdiction after the ICTY has completed adjudicating cases, added Takizaki.

Nation Building Before Tribunals

¶2. (C) MOFA Director of the Second Southeast Asia Division, Akio Isomata, emphasized the need to build democratic institutions before East Timor begins to think about accounting for past human rights violations. Japan is closely following investigations conducted by the recent UN Commissions of Inquiry, and Isomata acknowledged that such investigations are important to resolve underlying problems in essential government institutions; however, he cautioned against the international community being overly assertive. The UN Commission of Inquiry Report on the April-June 2006

violence had intentionally not identified individuals responsible for serious human rights violations in order to help speed national reconciliation, Isomata asserted. Indonesia will object if East Timor considers legal proceedings, he said.

¶3. (C) Accountability for crimes against humanity is very important. However, in the near term, Japan is placing more emphasis on helping build democratic institutions and establishing the rule of law in East Timor's "fragile" environment, Isomata explained. Japan has extended approximately USD 200 million in assistance to East Timor since 1999 and will dispatch two civilian police officers to serve as advisors to the UN on the ground, Isomata stated. He was unclear, however, on whether the two advisors would have executive police powers. Isomata agreed with S/A Shin's suggestion that training should focus on the importance of command and control, including measures for proper weapons registration and tracking. S/A Shin praised the importance of Japan's contributions, and agreed that any future inquiry into past crimes must be conducted in an integrated fashion, addressing all aspects of the criminal justice system including a functional police force, the prosecution and defense bar and the judiciary.

Hope for Khmer Rouge Tribunal

¶4. (C) The United States should use the United Nations to promote a war crimes tribunal in Cambodia and work to avoid the appearance that any single country, such as the United States or Australia, is demanding the trial, emphasized former UN Special Representative of the Secretary-General and Hosei University Professor Sukehiro Hasegawa. Japan's historical past and lack of human resources and experiences limits its ability to influence Cambodian leaders to move

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forward on accounting for crimes against humanity, Hasegawa said. Japan Institute for International Affairs (JIIA) Director-General Seki Tomoda said ASEAN should be the most important actor in pressuring Cambodia to hold a war crimes tribunal. He added that he was not optimistic ASEAN could influence Cambodia given ASEAN's policy of not interfering in other countries' domestic affairs.

¶5. (C) MOFA Principle Deputy Director of the First Southeast Asia Division, Atsushi Kuwabara, and Deputy Director, Masaki Kawaguchi, downplayed the impact of political interference and stressed the overall positive gains made by the Extraordinary Chambers in the Courts of Cambodia (ECCC). Kuwabara recognized that there have been attempts to influence the process, but did not believe they have risen to a level that would render the proceedings a sham. He said the involvement of international judges and the UN in the hybrid tribunal will make it possible to hold trials at an internationally acceptable level. Hasegawa believes that Cambodian judges should be included but the majority should be international judges to ensure the court can withstand local government pressure.

¶6. (C) Japan has sent strong messages urging Cambodian authorities (including Minister Sok An) to refrain from interfering with the work of the tribunal, Kuwabara noted. Citing the importance of the ECCC to the development of international standards for the Cambodian legal system, Kuwabara and Kawaguchi expressed hope that the United States will take a more active role. S/A Shin agreed that the tribunal can serve the dual purposes of bringing former Khmer Rouge leaders to justice and instilling the confidence of ordinary Cambodians in their legal system, but only if the judges know they can do their jobs without political interference or the fear of political interference.

¶7. (C) Kuwabara shared S/A Shin's concerns that the Second

Plenary had failed to agree on internal rules to govern the KRT in the November plenary, but faulted the complexities of trying to adopt more than 110 articles in just four or five days. He was encouraged by the overall good cooperation between international judges, Cambodian judges, and the UN, and pointed to disagreements even within the two groups of judges to refute claims that the Cambodian side was trying to slow the process. Kawaguchi cited recent problems with training to demonstrate the broader point that both the Cambodian side and the international side needed to make changes in the way they do business. While it was not good for the Cambodian Bar Association (CBA) to have opposed training by the International Bar Association, he said, much of the blame should rest on the international side for not informing the CBA in an appropriate manner. S/A Shin assured Kuwabara that international members of the KRT are now aware that they need to do more to smooth out problems. The resolution of internal problems would make the role of political influence more readily discernible, if the tribunal is nevertheless still unable to move forward, he added. S/A Shin told Kuwabara that the need to get past the internal rules has kept international friends of the court from addressing other issues important to the successful conduct of cases, such as technical issues related to investigations, case strategy, document databases, trial software and staffing.

International Criminal Tribunal for Former Yugoslavia

¶8. (C) S/A Shin met with UN Policy Division Director Shigeki Takizaki and Akihito Teruuchi at the Ministry of Foreign Affairs December 22 to discuss the future of the International Criminal Tribunal for the former Yugoslavia (ICTY). Shin told Takizaki that in addition to wanting the court to have completed all trials by 2008 and appeals by 2010, the United States is seeking an exchange of views on considering procedures and funding for residual jurisdiction matters that remain after 2010, such as post-appeal review proceedings. There is a general feeling among staff of the ICTY that some residual jurisdiction will remain after the tribunal is completed, said Shin. Also, if the dissolution of the court does not include a structure to handle

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carry-over cases, some indictees like Radovan Karadzic and Ratko Mladic might escape justice due to lengthy delays in bringing them to trial, which would in effect permit such fugitives to "win the battle of time," Shin warned Takizaki.

¶9. (C) Careful consideration of procedures after the ICTY has concluded adjudicating cases is essential to preserving the legacy of the Tribunal, Shin said to Takizaki. Shin raised several possibilities for post-2010 proceedings to Takizaki, including that the ICTY could remain as an appellate chamber only, or judges could participate without being in residence. Prosecution and defence counsel could return to their jurisdictions, only appearing in court to address post-appeal matters as they arise, further reducing costs. Teruuchi suggested that the ICTY could pass jurisdiction on to select local courts that were deemed to meet international standards.

¶10. (C) Completion of all cases by 2010 is Japan's major priority for the ICTY, stated Takizaki. The government of Japan had never considered the matter of residual jurisdiction before Shin mentioned it, explained Takizaki, thanking Shin for bringing the issue to Japan's attention. With no pre-existing policy on this issue, the Japanese government welcomes consultation with the United States. However, it is far too early to begin serious deliberations on post-completion structures, and involved parties should focus their efforts on driving the ICTY to completion, Takizaki stated. The current position of the Japanese

government is that if the ICTY fails to complete its mission by 2010, funding for any additional proceedings should be on a voluntary basis by concerned countries. However, Japan will be open to discussing the trials of late-arriving fugitives and the matter of residual jurisdiction closer to the 2010 deadline, but not any sooner, added Takizaki.

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